

AMENDED IN SENATE AUGUST 28, 2006

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2495

Introduced by Assembly Member ~~Nunez~~ *Frommer*

February 23, 2006

~~An act to amend Sections 14502 and 14503 of the Government Code, relating to transportation. An act to amend Section 143 of the Streets and Highways Code, relating to transportation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2495, as amended, ~~Nunez~~ *Frommer*. ~~California Transportation Commission. Transportation facilities: public-private partnerships.~~

Existing law, as amended by Chapter 32 of the Statutes of 2006, authorizes the Department of Transportation and regional transportation agencies, as defined, until January 1, 2012, to enter into up to 4 comprehensive development lease agreements with public and private entities, or consortia of those entities, for certain transportation projects that may charge certain users of those projects tolls and user fees, subject to various terms and requirements. Under these provisions, all negotiated lease agreements must be submitted to the Legislature for approval or rejection, with approval to be achieved by enactment of a statute.

This bill would modify these provisions to instead provide that the Legislature has 90 days to act after submittal of a negotiated lease agreement. The agreement would be deemed approved unless either house of the Legislature adopts a resolution rejecting the agreement.

The bill would also require the Legislative Analyst's Office and the Legislative Counsel to review the agreement and report to the Legislature within 30 days after submittal, as specified.

~~Existing law creates the California Transportation Commission, with various powers and duties relative to programming transportation capital improvement projects in the state transportation improvement program. Existing law provides for a commission of 11 members, with 9 members appointed by the Governor with the advice and consent of the Senate, and 2 ex officio members appointed by the Legislature. Voting members serve terms of 4 years.~~

~~This bill would expand the commission to 13 members, with one additional voting member each appointed by the Speaker of the Assembly and the Senate Committee on Rules, who would not be subject to Senate confirmation.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 143 of the Streets and Highways Code,
2 as amended by Chapter 32 of the Statutes of 2006, is amended to
3 read:

4 143.(a) (1) "Regional transportation agency" means any of
5 the following:

6 (A) A transportation planning agency as defined in Section
7 29532 or 29532.1 of the Government Code.

8 (B) A county transportation commission as defined in Section
9 130050, 130050.1, or 130050.2 of the Public Utilities Code.

10 (C) Any other local or regional transportation entity that is
11 designated by statute as a regional transportation agency.

12 (D) A joint exercise of powers authority as defined in Chapter
13 5 (commencing with Section 6500) of Division 7 of Title 1 of the
14 Government Code, with the consent of a transportation planning
15 agency or a county transportation commission for the jurisdiction
16 in which the transportation project will be developed.

17 (2) "Transportation project" means one or more of the
18 following: planning, design, development, finance, construction,
19 reconstruction, rehabilitation, improvement, acquisition, lease,
20 operation, or maintenance of highway, public street, rail, or
21 related facilities supplemental to existing facilities currently

1 owned and operated by the department or regional transportation
2 agencies that is consistent with the requirements of paragraph (2)
3 of subdivision (b).

4 (b) (1) Notwithstanding any other provision of law, only the
5 department, in cooperation with regional transportation agencies,
6 and regional transportation agencies, may solicit proposals,
7 accept unsolicited proposals, negotiate, and enter into
8 comprehensive development lease agreements with public or
9 private entities, or consortia thereof, for transportation projects.

10 (2) The number of projects authorized pursuant to this section
11 shall be limited to two projects in northern California and two
12 projects in southern California. The California Transportation
13 Commission shall select the candidate projects from projects
14 nominated by the department or a regional transportation agency.
15 No less than two of the selected projects shall be nominated by a
16 regional transportation agency. The projects shall be primarily
17 designed to improve goods movement, including, but not limited
18 to, exclusive truck lanes and rail access and operational
19 improvements. The projects shall address a known forecast
20 demand, as determined by the department or regional
21 transportation agency.

22 (3) All negotiated lease agreements shall be submitted to the
23 Legislature for approval or rejection. ~~Any approval shall be~~
24 ~~achieved by the enactment of a statute~~ *consideration. An*
25 *agreement shall be deemed approved unless within 90 days of its*
26 *submittal, not counting days when the Legislature is in*
27 *adjournment, either house of the Legislature adopts a resolution*
28 *rejecting the agreement.* Prior to submitting a lease agreement to
29 the Legislature, the department or regional transportation agency
30 shall conduct at least one public hearing at a location at or near
31 the proposed facility for purposes of receiving public comment
32 on the lease agreement. Public comments made during this
33 hearing shall be submitted to the Legislature with the lease
34 agreement. *The Legislative Analyst's Office and the Legislative*
35 *Counsel shall review the lease agreement for consistency with*
36 *statutory requirements and submit comments to the Legislature*
37 *within 30 days after submittal of the agreement to the*
38 *Legislature.*

39 (c) For the purpose of facilitating those projects, the
40 agreements between the parties may include provisions for the

1 lease of rights-of-way in, and airspace over or under, highways,
2 public streets, rail, or related facilities for the granting of
3 necessary easements, and for the issuance of permits or other
4 authorizations to enable the construction of transportation
5 projects. Facilities subject to an agreement under this section
6 shall, at all times, be owned by the department or the regional
7 transportation agency, as appropriate. For department projects,
8 the commission shall certify the department's determination of
9 the useful life of the project in establishing the lease agreement
10 terms. In consideration therefor, the agreement shall provide for
11 complete reversion of the leased facility, together with the right
12 to collect tolls and user fees, to the department or regional
13 transportation agency, at the expiration of the lease at no charge
14 to the department or regional transportation agency. At time of
15 reversion, the facility shall be delivered to the department or
16 regional transportation agency, as applicable, in a condition that
17 meets the performance and maintenance standards established by
18 the department and that is free of any encumbrance, lien, or other
19 claims.

20 (d) (1) The department or a regional transportation agency
21 may exercise any power possessed by it with respect to
22 transportation projects to facilitate the transportation projects
23 pursuant to this section. The department, regional transportation
24 agency, and other state or local agencies may provide services to
25 the contracting entity for which the public entity is reimbursed,
26 including, but not limited to, planning, environmental planning,
27 environmental certification, environmental review, preliminary
28 design, design, right-of-way acquisition, construction,
29 maintenance, and policing of these transportation projects. The
30 department or regional transportation agency, as applicable, shall
31 regularly inspect the facility and require the lessee to maintain
32 and operate the facility according to adopted standards. The
33 lessee shall be responsible for all costs due to development,
34 maintenance, repair, rehabilitation, and reconstruction, and
35 operating costs.

36 (2) In selecting private entities with which to enter into these
37 agreements, notwithstanding any other provision of law, the
38 department and regional transportation agencies may, but are not
39 limited to, utilizing one or more of the following procurement
40 approaches:

1 (A) Solicitations of proposals for defined projects and calls for
2 project proposals within defined parameters.

3 (B) Prequalification and short-listing of proposers prior to
4 final evaluation of proposals.

5 (C) Final evaluation of proposals based on qualifications, best
6 value, or both. If final evaluation is to be based on best value, the
7 California Transportation Commission shall develop and adopt
8 criteria for making that evaluation prior to evaluation of a
9 proposal.

10 (D) Negotiations with proposers prior to award.

11 (E) Acceptance of unsolicited proposals, with issuance of
12 requests for competing proposals.

13 (3) No agreement entered into pursuant to this section shall
14 infringe on the authority of the department or a regional
15 transportation agency to develop, maintain, repair, rehabilitate,
16 operate, or lease any transportation project. Lease agreements
17 may provide for reasonable compensation to the leaseholder for
18 the adverse effects on toll revenue or user fee revenue due to the
19 development, operation, or lease of supplemental transportation
20 projects with the exception of any of the following:

21 (A) Projects identified in regional transportation plans
22 prepared pursuant to Section 65080 of the Government Code and
23 submitted to the commission as of the date the commission
24 selected the project to be developed through a lease agreement,
25 as provided in this section, unless provided by the lease
26 agreement approved by the department or regional transportation
27 agency and the commission.

28 (B) Safety projects.

29 (C) Improvement projects that will result in incidental capacity
30 increases.

31 (D) Additional high-occupancy vehicle lanes or the conversion
32 of existing lanes to high-occupancy vehicle lanes.

33 (E) Projects located outside the boundaries of a public-private
34 partnership project, to be defined by the lease agreement.

35 However, compensation to a leaseholder shall only be made
36 after a demonstrable reduction in use of the facility resulting in
37 reduced toll or user fee revenues, and may not exceed the
38 reduction in those revenues.

39 (e) (1) Agreements entered into pursuant to this section shall
40 authorize the contracting entity to impose tolls and user fees for

1 use of a facility constructed by it, and shall require that over the
2 term of the lease the toll revenues and user fees be applied to
3 payment of the capital outlay costs for the project, the costs
4 associated with operations, toll and user fee collection,
5 administration of the facility, reimbursement to the department or
6 other governmental entity for the costs of services to develop and
7 maintain the project, police services, and a reasonable return on
8 investment. The agreement shall require that, notwithstanding
9 Sections 164, 188, and 188.1, any excess toll or user fee revenue
10 either be applied to any indebtedness incurred by the contracting
11 entity with respect to the project, improvements to the project, or
12 be paid into the State Highway Account, or for all three purposes,
13 except that any excess toll revenue under a lease agreement with
14 a regional transportation agency may be paid to the regional
15 transportation agency for use in improving public transportation
16 in and near the project boundaries.

17 (2) Lease agreements shall establish specific toll or user fee
18 rates. Any proposed increase in those rates during the term of the
19 agreement shall first be approved by the department or regional
20 transportation agency after at least one public hearing conducted
21 at a location near the proposed or existing facility.

22 (3) The collection of tolls and user fees for the use of these
23 facilities may be extended by the commission or regional
24 transportation agency at the expiration of the lease agreement.
25 However, those tolls or user fees may not be used for any
26 purpose other than for the improvement, continued operation, or
27 maintenance of the facility.

28 (4) Tolls and user fees may not be charged to noncommercial
29 vehicles with three or fewer axles.

30 (f) The plans and specifications for each transportation project
31 developed, maintained, repaired, rehabilitated, reconstructed, or
32 operated pursuant to this section shall comply with the
33 department's standards for state transportation projects. The lease
34 agreement shall include performance standards, including, but
35 not limited to, levels of service. The agreement shall require
36 facilities on the state highway system to meet all requirements
37 for noise mitigation, landscaping, pollution control, and safety
38 that otherwise would apply if the department were designing,
39 building, and operating the facility. If a facility is on the state
40 highway system, the facility leased pursuant to this section shall,

1 during the term of the lease, be deemed to be a part of the state
2 highway system for purposes of identification, maintenance,
3 enforcement of traffic laws, and for the purposes of Division 3.6
4 (commencing with Section 810) of Title 1 of the Government
5 Code.

6 (g) Failure to comply with the lease agreement in any
7 significant manner shall constitute a default under the agreement
8 and the department or the regional transportation agency, as
9 appropriate, shall have the option to initiate processes to revert
10 the facility to the public agency.

11 (h) The assignment authorized by subdivision (c) of Section
12 130240 of the Public Utilities Code is consistent with this
13 section.

14 (i) A lease to a private entity pursuant to this section is deemed
15 to be public property for a public purpose and exempt from
16 leasehold, real property, and ad valorem taxation, except for the
17 use, if any, of that property for ancillary commercial purposes.

18 (j) Nothing in this section is intended to infringe on the
19 authority to develop high-occupancy toll lanes pursuant to
20 Section 149.4, 149.5, or 149.6.

21 (k) Nothing in this section shall be construed to allow the
22 conversion of any existing nontoll or non-user-fee lanes into
23 tolled or user fee lanes with the exception of a high-occupancy
24 vehicle lane that may be operated as a high-occupancy toll lane
25 for vehicles not otherwise meeting the requirements for use of
26 that lane.

27 (l) The lease agreement shall require the lessee to provide any
28 information or data requested by the California Transportation
29 Commission or the Legislative Analyst. The commission, in
30 cooperation with the Legislative Analyst, shall annually prepare
31 a report on the progress of each project and ultimately on the
32 operation of the resulting facility. The report shall include, but
33 not be limited to, a review of the performance standards, a
34 financial analysis, and any concerns or recommendations for
35 changes in the future.

36 (m) No lease agreements may be entered into under this
37 section on or after January 1, 2012.

38 (n) To the extent that the design-build procurement method is
39 utilized for the award of construction or design contracts for
40 projects authorized under this section, those contracts shall be

1 subject to the requirements, parameters, and processes set forth in
2 Chapter 6.5 (commencing with Section 6800) of Part 1 of
3 Division 2 of the Public Contract Code, if that chapter is added
4 by either Assembly Bill 143 of the 2005–06 Regular Session or
5 Senate Bill 59 of the 2005–06 Regular Session.

6 ~~SECTION. 1 Section 14502 of the Government Code is~~
7 ~~amended to read:~~

8 ~~14502. The commission consists of 13 members appointed as~~
9 ~~follows:~~

10 ~~(a) Nine members shall be appointed by the Governor with the~~
11 ~~advice and consent of the Senate. One member shall be appointed~~
12 ~~by the Speaker of the Assembly and one member shall be~~
13 ~~appointed by the Senate Committee on Rules, with neither of~~
14 ~~these members subject to confirmation by the Senate. A member~~
15 ~~appointed pursuant to this subdivision shall not simultaneously~~
16 ~~hold an elected public office, or serve on any local or regional~~
17 ~~public board or commission with business before the~~
18 ~~commission.~~

19 ~~(b) One Member of the Senate appointed by the Senate~~
20 ~~Committee on Rules and one Member of the Assembly appointed~~
21 ~~by the Speaker of the Assembly shall be ex officio members~~
22 ~~without vote and shall participate in the activities of the~~
23 ~~commission to the extent that such participation is not~~
24 ~~incompatible with their positions as Members of the Legislature.~~

25 ~~(c) Notwithstanding any other provision of law, a voting~~
26 ~~member of the commission may serve on the High-Speed Rail~~
27 ~~Authority as established in Division 19.5 (commencing with~~
28 ~~Section 165000) of the Public Utilities Code.~~

29 ~~SEC. 2 Section 14503 of the Government Code is amended to~~
30 ~~read:~~

31 ~~14503. (a) Other than ex officio members, the members of~~
32 ~~the commission shall hold office for terms of four years, and~~
33 ~~until their successors are appointed, except as otherwise provided~~
34 ~~in this section.~~

35 ~~(b) In the case of the members initially appointed by the~~
36 ~~Governor, three shall be appointed to serve until February 1,~~
37 ~~1979, two until February 1, 1980, two until February 1, 1981,~~
38 ~~and two until February 1, 1982.~~

39 ~~(c) The members appointed by the Speaker of the Assembly~~
40 ~~and the Senate Committee on Rules pursuant to subdivision (a)~~

1 of Section 14502 shall hold office for terms of four years, and
2 until their successors are appointed.

O